

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

OLA F. VICARS  
(Claimant-Respondent)

PRECEDENT  
BENEFIT DECISION  
No. P-B-27  
Case No. 68-1940

S.S.A. No.

ERLE STANLEY GARDNER  
(Employer-Appellant)

Employer Account No.

The employer appealed from Referee's Decision No. BN-4856 which held the claimant not subject to disqualification for unemployment benefits under the provisions of section 1256 of the Unemployment Insurance Code and the employer's reserve account not relieved of benefit charges under section 1032 of the code on the ground that the claimant was discharged for reasons other than misconduct connected with her most recent work. Written argument was submitted by the Department of Employment. Written argument has not been received from the employer or the claimant.

STATEMENT OF FACTS

The claimant was last employed by the above employer as an office worker for approximately two and one-half years. She worked three days a week, Mondays, Tuesdays and Thursdays, and was paid at the rate of \$2.50 per hour, plus \$30 per month as automobile expense allowance. During her period of employment, the claimant, as well as the other employees, each year received from the employer a Christmas bonus. On Tuesday, December 19, 1967, the claimant, as well as the other employees, received the Christmas bonus for the year 1967. She was dissatisfied with the amount received because she believed all of the other employees had received a greater amount of money.

On her next workday, Thursday, December 21, 1967, the claimant notified her supervisor that she intended to leave employment at the end of December 1967.

On December 26, 1967, as the result of information received by the claimant from another employee, she contacted the employer's executive secretary, who told the claimant it would be unnecessary for her to again report for work but that her wages would be paid by the employer through the effective date of her resignation. The claimant did not again report for work but did receive pay for the days remaining in December.

The claimant testified that she believed the conditions under which she worked were somewhat unsatisfactory in that, in her opinion, the work area to which she was assigned was poorly lighted and extremely crowded. She was unable, she testified, to easily perform the duties of her job because the desk to which she was assigned was not suitable to the work she was performing. She testified that on occasion she had mentioned to her supervisor that, in her opinion, the work area was small and poorly lighted. However, she took no overt action to attempt to alleviate the conditions which she considered to be unsatisfactory. She did testify that she submitted her resignation on December 21 because "the final straw was the bonus."

There was no indication in the record that the employer was dissatisfied with the claimant's work performance or contemplated terminating the claimant's employment prior to her announced intention to resign.

The claimant filed her claim for unemployment insurance benefits effective January 14, 1968.

#### REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides for the disqualification of a claimant, and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left his most recent work without good cause or was discharged for misconduct connected with his most recent work.

In this case, the claimant informed the employer that it was her intention to leave employment on a specific date in the near future. Upon receipt of this information, the employer informed the claimant that it was unnecessary for her to continue on in employment until the effective date of her resignation.

Similar factual situations have been before the Unemployment Insurance Appeals Board where a claimant's employment was terminated by the employer prior to the effective date of the claimant's resignation. For example, in Benefit Decision No. 5581, the claimant, on October 7, notified his employer of his intention to leave work at the end of the following week. On October 8, the employer discharged the claimant. Subsequently, the claimant, through intervention of his union, succeeded in obtaining payment for the balance of his wages to the effective date of his resignation.

In Benefit Decision No. 6784, the claimant informed the employer on June 15 of his intention to resign at the close of business on July 27. On July 24, the employer advised the claimant that it would be unnecessary for him to return to work although he was paid wages for July 26 and 27.

In all of these cases, it was held that the claimants were discharged by the employer.

These conclusions were based on the reasoning that the voluntary act of the employee in submitting his resignation was supplanted by the equally voluntary act of the employer as the proximate cause of the termination of employment. That is, where the claimant set a specific date in the future as the date on which he would leave employment, the employer became the moving party in the termination of employment when he accelerated the date of the claimant's unemployment. In these cases we did not consider it necessary to decide if the claimant had good cause for submitting the resignation since we concluded that the employer was the moving party in the termination of the claimant's employment.

In deciding cases under the Unemployment Insurance Code, we adhere to the principle of stare decisis.

However, when experience or better reasoning shows that former decisions have been in error, we believe that it is incumbent upon us to overrule or modify those decisions.

We now believe that the reasoning followed in the cited decisions above is not in accordance with the legislative intent set down in section 100 of the Unemployment Insurance Code, wherein it is stated:

"The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." (Emphasis added)

Although the claimant stopped working prior to the effective date of her resignation, the employer continued her wages through that date. The claimant in effect was paid wages for not working and suffered no loss by the action of the employer in accelerating the last day to work. That is, the claimant's unemployment was caused by her voluntary action in submitting her resignation and the action of the employer did not change this basic reason for the claimant's unemployment. She is not unemployed through no fault of her own, and we conclude that she voluntarily left her most recent work.

Since we have held that the claimant voluntarily left her work, it is necessary to decide if she established good cause for so doing.

The phrase "good cause" is neither defined in the Unemployment Insurance Code nor in administrative regulations of the Department of Employment or of this board. We have considered many times the concept of "good cause" within the meaning of section 1256 of the code. Bearing in mind the provisions of both sections 100 and 1256 of the code, we have determined in the

past that there is good cause for the voluntary leaving of employment only in those cases where the reasons for such action are of a compelling nature.

In establishing this standard over the years, this board evolved and enunciated the principle that there is good cause for the voluntary leaving of work when the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

Similar standards in varying language have been adopted by our courts. A consideration of the concept of good cause under the code in California Portland Cement Company v. California Unemployment Insurance Appeals Board, 178 Cal. App. 2d 263, 3 Cal. Rptr. 37, led the appellate court to cite with approval Bliley Electric Company v. Unemployment Compensation Board of Review, 158 Pa. Super. 548, 45 A. 2d 898, wherein the Pennsylvania court stated in considering a statute similar to our own:

" . . . However, in whatever context they appear, they connote, as minimum requirements, real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith."

The court further stated in California Portland Cement that establishment of good cause under the code is, in effect, the drawing of a legal conclusion from a particular set of facts, and that good cause cannot be determined in the abstract any more than any other legal conclusion.

Although the claimant has testified that she was unhappy with the working conditions, she had been working under the same conditions for approximately two and one-half years. She submitted her resignation when she was dissatisfied with the bonus (or gift) with which the employer provided her. There was no indication that the employer was under any kind of a contractual obligation to give to the claimant any specific amount of money

as a bonus or gift, or actually to give her any bonus at all. Under these circumstances, we conclude that the claimant's reasons for leaving employment did not constitute good cause within the meaning of sections 1256 and 1030 of the code.

In view of the conclusion arrived at in this case, Benefit Decisions Nos. 5581, 6784, and other prior decisions which, on similar facts, arrive at a result different than that herein, are overruled.

#### DECISION

The decision of the referee is modified. The claimant voluntarily left her most recent work without good cause and is subject to disqualification under section 1256 of the code. The employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, October 17, 1968.

#### CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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